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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,445	10/26/2001	Thomas E. Allen	M4605.002	3556
23875	7590	11/07/2003	EXAMINER	
MOLLY D MCKAY, PC 3207 E 22ND STREET TULSA, OK 74114-1823			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/002,445

Applicant(s)

ALLEN, THOMAS E.

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-19 is/are pending in the application:
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-9 and 12 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 10 and 18 is/are rejected.
- 7) ☒ Claim(s) 3-5, 11, 13-15 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Initial Notes

1. Claim 19 remains withdrawn from consideration as non-elected. The amendment filed 14 October 2003 does not properly reflect the status of claim 19. Any future amendment or proposed amendment must properly reflect the status of the claims.
2. The amended version of claim 18 contains text in line 3 which is both underlined and struck-through. The same text must not be both underlined and struck-through.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lack of antecedent basis for "the means for pressurizing the upstream area" makes the scope of the claim unclear. Applicant states "[a]pplicant has amended claim 11 to provide antecedent basis regarding 'means for pressurizing...' to claim 18"; however, amended claim 18 is independent.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nedderman (US 5,758,691). Regarding claim 1, Nedderman ('691) discloses an automatically adjusting annular jet mixer comprising a stationary hollow housing (14, including 34) and a hollow inner nozzle member (12) that moves axially within the housing along a centerline of the housing in proportional response to variations in pressure of supply fluid flowing to the housing (see col. 2 line 52 to col. 3 line 2). While Nedderman (US 5,758,691) discloses the fluid being a polymer solution rather than "water" which is recited in the claim, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey* 152 USPQ 235 (CCPA 1967). Also, [e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claims" *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969) and "inclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims" *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Regarding claim 2, the inner nozzle member (12) is attached on one end to a pipe (threaded shoulder piece 30) having an inlet opening (see Figs. 1 and 2) for introducing material into the inner nozzle member, said housing (14) having a supply inlet (16) that admits fluid to a downstream area (18) located between the housing (14) and the inner nozzle member (12), a nozzle opening (32) continuous with said downstream area (18), said nozzle opening (32) formed between a discharge end (20) of the inner nozzle member (12) and the housing (14) to allow supply fluid to flow via the nozzle opening (32) to contact material flowing through the inner nozzle member (12). While use of the

apparatus in conjunction with the materials discussed in the claim is not disclosed, the claim is still considered to be anticipated, based upon the decisions of *In re Casey*, *Ex parte Thibault*, and *In re Otto* quoted above in the rejection of claim 1. Regarding claim 10, Nedderman ('691) discloses an automatically adjusting annular jet mixer comprising a hollow stationary mixer housing (14 including 34), and a hollow inner nozzle member (12) that moves within the housing along a centerline of the housing in proportional response to variations in pressure of supply fluid flowing to the housing, (see col. 2, lines 1-16 and col. 2 line 52 to col. 3 line 2; Fig. 1 vs. Fig. 2), said housing (14) having a supply inlet (16) that admits fluid to a downstream area (18) located between the housing (14) and the inner nozzle member (12), a nozzle opening (32) continuous with said downstream area (18), said nozzle opening (32) formed between a discharge end (20) of the inner nozzle member (12) and the housing (14) to allow supply fluid to flow via the nozzle opening (32) to contact material flowing through the inner nozzle member (12). While use of the apparatus in conjunction with the materials discussed in the claim is not disclosed, the claim is still considered to be anticipated, based upon the decisions of *In re Casey*, *Ex parte Thibault*, and *In re Otto* quoted above in the rejection of claim 1.

Allowable Subject Matter

7. Claims 6-9 and 12 are allowed for the reasons set forth in the previous office action.
8. Claim 18 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the

limitations of the base claim and any intervening claims. This claim is considered to be directed to allowable subject matter for the reason set forth in the previous office action.

9. Claims 3-5, 11, 13-15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art is Nedderman (US 5,758,691). However, Nedderman (US 5,758,691) does not disclose "means for pressurizing said upstream area...", which are described in the instant specification or equivalents thereof, in combination with the remaining limitations of respective claims.

Response to Arguments

10. Applicant states "[a]pplicant has amended claim 11 to provide antecedent basis regarding 'means for pressurizing...' to claim 18"; however, amended claim 18 is independent.

11. Applicant incorrectly states "claims 13 and 14 are dependent upon rewritten claim 12" and argues that claims 13 and 14 should be allowed because claim 12 is allowable. Claim 13 actually depends from claim 11 and claim 14 from claim 13.

12. Applicant argues that Nedderman ('691) does not disclose the functional recitation "moves ... in proportional response to variations in pressure of supply water...". While it is agreed that Nedderman ('691) does not use the word "proportional", it is still considered that Nedderman ('691) discloses any structure implied by the recited intended manner in which the "inner nozzle member" is stipulated to move. Nedderman ('691) explains that pressure of supply fluid varies the position of

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the nozzle member by acting against the bias of "spring 22". While the word "proportional" is not used, it is intrinsic that a spring provides such a proportional response. See "Physics for Scientist and Engineers", page 383.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin



CHARLES E. COOLEY
PRIMARY EXAMINER